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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

SEIMA NNEELENG MOLOI, JR.,

Defendant and Appellant.

G038385

(Super. Ct. No. 02NF3404)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Richard F. Toohey, Judge. Affirmed.

Mark L. Christiansen, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Barry Carlton and Sabrina Y. Lane-Erwin, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Seima Nneeleng Moloi, Jr. of first degree murder (Pen. Code, §§ 187, subd. (a), 189),<sup>1</sup> and found true special circumstances allegations he committed murder while engaged in the commission of robbery and burglary. The court sentenced Moloi to serve an indeterminate life term without possibility of parole, imposed a \$20 court security fee (§ 1465.8), a \$10,000 restitution fine (§ 1202.4, subd. (b)(1)), and a conditional parole revocation fine of \$10,000 (§ 1202.45). Pursuant to section 1202.4, subdivision (f), the court also ordered Moloi to pay \$2,565.37 to the California Victim's of Crime Compensation Fund and \$596.40 to the Orange County Victim/Witness Emergency Fund.

On appeal, Moloi argues the trial court erroneously excluded critical background information about his key witnesses, and improperly instructed the jury on flight demonstrating a consciousness of guilt and that a defendant's willfully false or deliberately misleading statements could be used as circumstantial evidence of guilt, and erroneously failed to instruct the jury that a separate robbery charge had been dismissed during trial. He also contends the court's imposition of a \$20 court security fee violates the ex post facto clause, and argues the court's order that he pay \$596.40 to the Victim/Witness Emergency Fund was made without legal authority. Moloi's contentions are meritless. Therefore, the judgment is affirmed.

## I

### FACTS

Gary Reynolds was the front desk clerk at the Dupre Hotel in Anaheim during the late night and early morning hours of October 22 and 23, 2002. At approximately 8:00 a.m. on October 23, a hotel maintenance worker reporting to work noticed blood stains on the front door handle. When he entered the locked hotel door, the worker quickly noticed Reynolds' bloodied body lying on the floor in a back office.

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<sup>1</sup> All further undesignated statutory references are to the Penal Code.

Reynolds had suffered severe head injuries. There were also small bits of glass in some cuts on the right side of his face and neck. Blood splatter and blood transfer evidence suggested that Reynolds had been killed in the front office area just behind the hotel's front desk, but that he also had been hit in the head while in the back office bathroom. The bathroom door appeared to have been kicked and the toilet tank was broken. Several items, including a computer monitor, a cider bottle, a bottle of hydrogen peroxide, and a broken framed mirror had blood marks or smears on them.

Many of the blood marks looked as if they had been made by someone wearing blood-soaked cloth gloves. Bloody shoe prints found in various locations matched the sole pattern of an Adidas athletic shoe, size 11 to 12. Bloodstains led to an upstairs manager's office where investigators later discovered blood stains on handles to a file cabinet and a refrigerator that, again, were consistent with someone having worn cloth gloves. There were bloody transfers on the hotel's breaker box, which was off, and on a bottle of rubbing alcohol. Even the hotel's breakfast area had blood stains on various dispensing buttons and other items. Some of these stains were consistent with having been wiped with a bloody cloth. There was \$750 missing from the hotel's cash drawer and an unknown amount missing from a charity jar that had been on the front counter. The contents of Reynolds' wallet were strewn on the office floor, and some coins were taken from a file cabinet in the manager's office.

Moloi had been an employee of the hotel during the early summer of 2002. Although he had been fired before October, Moloi knew several of the hotel's employees and he had been inside the hotel, including the back office, on several days just prior to the murder. On one occasion, he pointed out to an employee that the hotel's new security camera system had not yet been set up to record.

On the night of the murder, Moloi first stopped at the hotel around 8:00 p.m. He was wearing jean shorts, a T-shirt, white athletic shoes, white cotton gloves and carried a grey backpack. He left after approximately 20 minutes, but returned to the hotel

just after 10:00 p.m. The employee on duty at the time told him the owner was on the premises just to get him to leave. This employee verified the amount in the cash drawer, but did not put any of it in the safe.

Reynolds arrived at around 10:30 p.m. and was scheduled to work until 7:00 a.m. on October 23. It did not appear that he had registered any guests during his shift, but there was a partially complete transaction involving a Mark Aaron on his computer screen. The computer automatically timed this transaction at 3:48 a.m.

Moloi became an immediate suspect, but Anaheim police officers could not locate him for several days despite the efforts of multiple officers contacting the homes of his friends and relatives. Moloi eventually surrendered to police on October 28. At the time of his surrender, Moloi was wearing size 11 Adidas athletic shoes, but not the Adidas Superstar II type shoes. Nor was this type of Adidas athletic shoe found in his dormitory room on the campus of California State University in San Bernardino. Moloi had some scabbed injuries and bruising on his lower leg, an injury to his left ankle, a cut on the inside of the right leg, and a cut to his right little finger. He also had a bruise on the left side of his neck and discoloration of the skin on his right shoulder.

Moloi did not give a statement to police, but he did talk to one of his cellmates, Troy Jones. Jones was a drug addict and has a lengthy criminal history. He was arrested for drug possession in the summer of 2003 and incarcerated in the Orange County jail. When Moloi was transferred into the two-person cell Jones had been assigned, they started to talk to each other. According to Jones, who made an agreement with the district attorney in exchange for his testimony, Moloi said that he had a plan to avoid being convicted of Reynolds' murder. Part of Moloi's plan involved writing a letter implicating a third party, which would be rewritten by an employee of the hotel, and later delivered to the district attorney. Moloi was a prolific letter writer while he was in custody and an expert verified that the letter Jones provided to police officers had in fact been written, at least in part, by Moloi.

In addition to the letter, Jones testified that Moloi told him he was being held for murder and robbery. He explained to Jones that he entered a hotel to talk to the “guy” who worked there to collect on moneys owed him. When he talked to this man, the man bragged about being a combat expert and fighter, called Moloi some names, and eventually turned his back on Moloi. Moloi confronted him and a deadly fight ensued. Moloi said the murder happened between 3:00 and 4:00 a.m. Jones thought that Moloi might have mentioned something about large quantities of drugs being involved, but he was sure Moloi told him the guy owed him money. Moloi admitted using a bottle, a glass mirror, something from a toilet, and a computer battery as weapons in the attack. Moloi said that he thought there was a large amount of money at the hotel, but denied taking any money and claimed there had been no robbery. However, he did tell Jones that he wore cloth gloves in an effort to avoid leaving fingerprints.

Moloi told Jones he walked to his grandparents’ house after the murder, let himself in, and then left to catch a bus and dispose of his clothing. Later, he said that he wished he had awakened his grandparents because they would have given him an alibi. Moloi said he stayed with his parents for awhile, but his father drove him to the police station so that he could turn himself in.

Although the police did not find size 11 to 11 and a half Adidas Superstar II shoes in any of Moloi’s things, they did locate a video surveillance tape from an AM/PM market located near the Dupre Hotel that showed Moloi entering the store at approximately 11:40 p.m. on the 22nd. At the time, Moloi was wearing shoes that looked very similar to the Adidas Superstar II model shoe.

### *Defense Evidence*

Moloi presented an alibi defense. Albert Cowings, Moloi’s maternal grandfather, testified that Moloi came to his home in Stanton, California on October 21 to celebrate Cowings’ 87th birthday. Cowings also saw Moloi the following day, October

22, and drove him to Anaheim to visit a friend. Moloi was wearing a “dingy white T-shirt” and blue jean shorts on the 22nd, and he was wearing the same clothing the following morning, October 23, when he returned to Cowings’ home at approximately 8:00 a.m.. Cowings did not see any injuries on Moloi on the morning of the 23rd, but Cowings left his home shortly after 8:00 a.m. when Moloi went to sleep.

At approximately 1:00 p.m., Cowings drove Moloi to Corona to meet Moloi’s father, Seima Moloi, Sr. Moloi Sr. also inspected his son for injuries and found none. A couple of days later, an Anaheim detective contacted Cowings, but Cowings refused to talk to him because he “was protecting [his] grandson.” Cowings testified that he gave Moloi \$20 to \$30 two or three times in October 2002 and that he would give Moloi money whenever he asked for it. Cowings also testified that Moloi frequently spent the night at his Stanton home or the home of his maternal grandparents in Anaheim. Cowings stated that Moloi did not need money. Moloi lived with Cowings during his high school senior year, but enrolled in the California State University at San Bernardino in the fall of 2002.

On October 23, Cowings drove Moloi to Corona and Moloi Sr. drove his son to Palm Springs. While Moloi was in Palm Springs, his father learned that the Anaheim Police Department considered Moloi to be a suspect in the Reynolds’ murder. Consequently, Moloi Sr. drove his son to the Anaheim Police Department. Moloi Sr. also testified that his son frequently jogged in the early morning hours, and that he had never seen his son wear gloves of any kind.

Alosi Moloi, Moloi’s paternal grandfather, testified that prior to October 2002, Moloi had lived with him and his wife in their Anaheim home. Focusing on October 2002, defense counsel asked Alosi when he recalled last seeing his grandson. Alosi Moloi responded, “The Tuesday morning before I went to school.” His reference to going to school and defense counsel’s attempt to clarify whether Alosi Moloi was a student or had some other reason for going to school were objected to and ruled

irrelevant. Eventually, Alosi Moloi testified that he last saw his grandson on the morning of October 22, 2002, that he frequently gave him between \$20 and \$50, and that his grandson frequently jogged in the early morning hours. Defense counsel also asked Alosi Moloi where he was born and if his grandson held dual citizenship. Both questions elicited relevancy objections that were sustained by the court. However, on redirect, the defense introduced evidence of Alosi Moloi's occupation as a college professor.

Moloi testified on his own behalf. He denied killing and robbing Reynolds, and denied burglarizing the Dupre Hotel. Moloi testified that he worked at the Dupre Hotel for a couple of weeks in 2002. He was in his final year of high school at the time and lived with his paternal grandfather. As a front desk clerk, Moloi generally worked from 3:00 to 11:00 p.m., Monday through Friday, although he occasionally worked weekends. Moloi stated that he had been trained to put any money he received from guests into the cash drawer during his shift, to balance the cash drawer at the beginning of his shift, and to transfer amounts exceeding \$300 to the safe at the end of his shift. The safe was located in the back office, and two keys were required to open the safe door. Moloi stated that he never knew where the keys were kept, and explained that he deposited money in the safe by using a cylinder apparatus, not by opening the safe door.

Moloi moved to his parents' Palm Springs home a few weeks before he started school at California State University at San Bernardino. When school started, he moved into a campus dormitory. Moloi testified that his family gave him cash "all the time." The weekend before the murder, Moloi's mother picked him up from school and drove him to his maternal grandfather's house for a birthday party. The family had dinner at a restaurant and his mother drove him to his paternal grandparents' to spend the night. He decided to make a social call on former coworkers and jogged from his paternal grandparents' home in Anaheim to the Dupre Hotel at approximately 8:00 p.m. On the way to the hotel, Moloi cut his finger and ankles on a chain link fence. He said the mark on his neck was a hickey left by his girlfriend, Arlene.

During his visit with one of the Dupre Hotel employees, Moloi spent time in the hotel lobby, went into the back office, and used the bathroom. He recalled touching the computer and a cider bottle. Moloi testified that the cut on his finger was bleeding a little bit when he picked up the cider bottle and he went into the bathroom to wash his hands and clean the cut. He was wearing shorts and a T-shirt and either Nike or Puma running shoes. Moloi denied ever owning a pair of Adidas athletic shoes.

Moloi testified that he left the Dupre Hotel at approximately 8:30 a.m. on Saturday, and that he returned to the hotel on Monday, the 21st, at approximately the same time. On Tuesday, the 22nd, Moloi again went to the hotel at approximately 8:00 a.m. The reason for all three of his visits to the hotel was to visit with former coworkers. On Tuesday morning, one of the employees offered him some juice in a Styrofoam cup. He left approximately 45 minutes later and went to a friend's house. At 10:45 a.m., he stopped at a convenience store and bought a soft drink and some trail mix before heading back to his grandparent's home. Moloi testified that he did not leave his grandparent's home until the morning of October 23. He denied returning to the Dupre Hotel in the early morning hours of October 23, and he denied ever meeting Reynolds.

On the 23rd, Moloi visited with his maternal grandparents in Stanton. Later that day, he received a telephone call from his father, asking why Anaheim detectives wanted to talk to him. Moloi's grandfather drove him to Corona where he met with his father. His father directed him to lift his shirt and shorts and take off his shoes so that he could check for injuries. After giving Moloi the once-over, his father drove him to Palm Springs where he stayed for five days before turning himself in to the Anaheim Police. Moloi testified that he turned himself in as soon as he became aware that he was a suspect in the homicide, and that his father had advised him to not talk to police when he was just wanted for questioning.

Moloi stated that although he holds dual citizenship with South Africa and the United States, he made no effort to leave the United States. As for Troy Jones, Moloi



testified that Jones repeatedly tried to get him to talk about his case, and that Jones had access to his legal paperwork, including copies of the police reports and witness interviews. Moloi wrote letters every day of his incarceration, and he frequently allowed Jones to read his letters and look at his personal photographs. However, he did not write the letter to the district attorney's office, and he denied trying to devise a plan to have someone send the district attorney a letter that would implicate another person in the Reynolds' murder.

On cross-examination, Moloi admitted that at the time he surrendered himself to the authorities he was wearing a pair of Adidas athletic shoes, size 11, blue cutoffs, and a white T-shirt, but he claimed his father made him change into these items during the drive from Palm Springs to Anaheim. He acknowledged that he was wearing a different pair of athletic shoes when he stopped at the AM/PM market. Moloi admitted that he had not returned to the Dupre Hotel for several months after his termination, but that he visited the hotel three times between October 19 and 22.

## II

### DISCUSSION

#### *Court's Exclusion of Background Information About Moloi's Witnesses*

During Cowings' testimony, defense counsel asked, "Mr. Cowings, are you retired or working?" Cowings' response, "I'm retired Air Force[,]," prompted an objection from the prosecutor on relevance grounds. The prosecutor's objection was sustained. Defense counsel then asked Cowings, "You did work as a security guard, is that right?" Cowings answered, "Yes, sir[]" before the prosecutor again interposed a relevancy objection. The court sustained the objection and ordered Cowings' response stricken from the record. On redirect, defense counsel returned to the subject, asking Cowings, "And you mentioned that you are — you work in security. Were you working in security in October of '02? [¶] . . . [¶] And what kind of security were you doing?" The court overruled the prosecutor's relevancy objection, and Cowings replied, "I

worked top secret clearance.” The prosecutor renewed his relevancy objection, which the court sustained this time and ordered Cowings’ response stricken. Nevertheless, defense counsel persisted with the following colloquy: “[Defense counsel]: May I ask this then, Mr. Cowings, as part of your job, were you trained to make observations of persons?” [¶] [Cowings]: Observe and report. [¶] [Defense counsel]: Okay. And did you so, in fact, observe your grandson that morning when you arrived at your house on the 23rd of October? [¶] [Cowings]: I did. [¶] [Defense counsel]: Is that why you found no — you did not see any fresh injuries? [¶] [Cowings]: None.”

On appeal, Moloi challenges the trial court’s exclusion of evidence concerning Cowings’ occupational background, arguing “that there is a ‘reasonable chance’ that a more favorable outcome would have taken place had the jurors been better informed . . . with a true knowledge of [ ] how to evaluate the source of that testimony. [Citations.]” He contends the trial court’s rulings deprived him of the right to present a defense, and deprived him of his federal Constitutional rights to compulsory process and due process. We disagree.

The following passage from *People v. Thornton* (2007) 41 Cal.4th 391 is highly instructive: “Ordinarily a criminal defendant’s attempt ‘to inflate garden-variety evidentiary questions into constitutional ones [will prove] unpersuasive. ‘As a general matter, the ‘[a]pplication of the ordinary rules of evidence . . . does not impermissibly infringe on a defendant’s right to present a defense.’ [Citations.] Although completely excluding evidence of an accused’s defense theoretically could rise to this level, excluding defense evidence on a minor or subsidiary point does not impair an accused’s due process right to present a defense.” [Citation.]” (*Id.* at p. 443.) Here, the trial court permitted the defense to establish Cowings’ former occupation to the extent it was relevant to the point being made, i.e., that Moloi’s grandfather did not see any fresh injuries on the morning after Reynolds’ murder. Because the prosecution argued the assailant most probably would have been injured during the struggle, Cowings’

observations were relevant. However, the fact that he apparently had top secret security clearance at one time in his career was not relevant to any material issue at trial.

We reach the same conclusion with respect to certain background information about Alosi Moloi, Moloi's paternal grandfather.<sup>2</sup> Alosi Moloi testified that the last day he saw his grandson was on October 22 before he, Alosi Moloi, went to school. Defense counsel asked, "What do you mean when you went to school?" The prosecutor's relevancy objection was sustained. Defense counsel then asked if Alosi Moloi was a student, which he denied before the prosecutor could interpose another objection on grounds of relevance. Later, defense counsel asked Alosi Moloi, "[w]here were you born," and if Moloi holds dual citizenship. The court sustained the prosecutor's relevancy objection to both questions. However, on redirect examination, defense counsel elicited evidence that Alosi Moloi is a college professor, and the prosecutor's objection to his answer was overruled.

Although Moloi argues the court erroneously precluded trial counsel from introducing relevant evidence in support of his defense, i.e., his paternal grandfather's profession, birthplace, and evidence of Moloi's dual citizenship, we fail to understand the significance of the evidence Moloi believes was wrongly excluded. While the credibility of witnesses is important to the jury's determination of the facts, the particular information Moloi sought to introduce had little bearing on Alosi Moloi's credibility. Nor did this information relate to any material issue at trial. As such, it was in fact irrelevant. (Evid. Code, § 210.) Nor do we agree with Moloi's characterization of the excluded evidence as absolutely essential to demonstrate his witness' "accurate and

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<sup>2</sup> The Attorney General asserts this issue is waived by virtue of trial counsel's failure to make an offer of proof. We proceed to the merits of the question if for no other reason than to avoid the inevitable ineffective assistance of counsel claim that would follow.

honest” nature. Evidence of Alosi Moloi’s profession and citizenship, and any evidence of Moloi’s dual citizenship was irrelevant and properly excluded by the trial court.

*Jury Instruction on Flight as Circumstantial Evidence of Guilt*

The court instructed the jury, pursuant to section 1127c and CALJIC No. 2.52, that “[t]he flight of a person after the commission of a crime after he is accused of a crime is not sufficient in itself to establish his guilt but is a fact, which if proved, may be considered by you in light of all other proved facts in deciding whether the defendant is guilty or not guilty. The [weight] to which this circumstance is entitled is a matter for you to decide.” Moloi argues “there was no evidence of flight from the scene” in his case, and that the “unfair effect” of giving this instruction violated his federal Constitutional rights to due process and a fair trial. We disagree.

“‘In general, a flight instruction “is proper where the evidence shows that the defendant departed the crime scene under circumstances suggesting that his movement was motivated by a consciousness of guilt.”’ [Citations.] Evidence that a defendant left the scene is not alone sufficient; instead, the circumstances of departure must suggest ‘a purpose to avoid being observed or arrested.’ [Citations.] To obtain the instruction, the prosecution need not prove the defendant in fact fled, i.e., departed the scene to avoid arrest, only that a jury *could* find the defendant fled and permissibly infer a consciousness of guilt from the evidence. [Citation.]” (*People v. Bonilla* (2007) 41 Cal.4th 313, 328.) The evidence here supported giving an instruction on flight.

Although Moloi did not flee the state, he did leave Anaheim for Palm Springs shortly after the murder, and he stayed in Palm Springs for several days when he knew Anaheim police detectives wanted to talk to him. Although Moloi and his family offered innocent explanations for this activity, the jury was free to reject this testimony and infer another motivation. Various police officers and detectives testified to their efforts to locate Moloi in places where he should have been found, i.e., his school and

family members' homes, but their efforts were to no avail until the family became aware of his suspect status. By that time, several days had passed, giving Moloi ample time to discard evidence and plan his defense. Thus, the trial court properly gave CALJIC No. 2.52.

*Jury Instruction on Willfully False or Deliberately Misleading Statements*

After giving standard instructions defining direct and circumstantial evidence, the trial court read CALJIC No.2.03, which states, “If you find that before this trial the defendant made willfully false or deliberately misleading statements concerning the crime for which he is now being tried, you may consider that statement as a circumstance tending to prove a consciousness of guilt. However, that conduct is not sufficient by itself to prove guilt, and its weight and significance, if any, are for you to decide.”

When the parties and the court discussed jury instructions, the court referenced CALJIC No. 2.04,<sup>3</sup> stating, “I pulled [this instruction] in relation to that letter that was testified to by Mr. Jones.” When the topic moved to CALJIC No. 2.03, the prosecutor, again referencing statements Moloi made to Jones, argued, “The deliberately misleading statement would be that [Moloi] did not go [to the hotel] with the intent to rob, the scenario that he gave about how the robbery took place . . . we believe that’s deliberately misleading about these crimes.”

Moloi contends there was no evidence of fabrication here. He states the court gave CALJIC No. 2.03 based “only [on] a belief in the prosecution’s case and theory of complete guilt and it [had] no relevant purpose.” In addition, he contends that

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<sup>3</sup> The court gave the following version of CALJIC No. 2.04 at trial: “If you find that the defendant attempted to fabricate evidence to be produced at the trial, that conduct may be considered by you as a circumstance tending to show a consciousness of guilt. However, that conduct is not sufficient by itself to prove guilt, and its weight and significance, if any are for you to decide.”

because “[p]roof of robbery was essential for the special circumstance,” the instructional error also lowered the prosecution’s burden of proof. We disagree.

The California Supreme Court has repeatedly upheld the language of CALJIC No. 2.03 and the trial court’s determination to give this instruction where warranted by the evidence. (*People v. Barnwell* (2007) 41 Cal.4th 1038, 1057; see also *People v. Stitely* (2005) 35 Cal.4th 514, 555.) The evidence of Moloi’s statements to Jones, the letter he purportedly asked Jones to transmit, and his own statements provide more than ample justification for giving CALJIC No. 2.03. As the trial court observed, the jury was free to disbelieve Jones testimony and accept Moloi’s exculpatory statements. CALJIC No. 2.03 did not preclude the jury from determining that Moloi *did not* make deliberately misleading or false statements about a crime. Moreover, there is no basis to conclude the instruction, either in the abstract or as applied in this case, favors the prosecution’s case or lowers the burden of proof. (See *People v. Harmon* (1992) 7 Cal.App.4th 845,850-851.)

#### *Failure to Instruct the Jury on Dismissal of Robbery Charge*

The court dismissed the robbery charge alleged in count 2 of the information on motion of the prosecutor. The court did not advise the jury of the dismissal, and instructed the jury that it could find Moloi guilty of murder under two theories: (1) deliberate and premeditated murder, and (2) felony murder committed during a burglary or robbery. The jury was also given special circumstance instructions with respect to burglary or robbery, and instructions on second degree murder as a lesser included offense to first degree murder.

Moloi contends the dismissal of the robbery charge prevented the prosecution from relying on robbery as a special circumstance or as a basis for arguing first degree murder under a felony-murder theory, and that the court erred by failing to inform the jury of the dismissal. We disagree.

First, Moloi fails to cite any legal authority for his assertion of trial court error by virtue of the court's failure to advise the jury that the robbery charged had been dismissed. His failure to cite legal authority in support of this proposition constitutes a waiver of the right to appellate review of the issue. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) Second, Moloi's reliance on rules applicable to section 1385 dismissals and principles of double jeopardy notwithstanding, the dismissal of the robbery count does not affect the felony murder conviction. (See *People v. Morris* (1988) 46 Cal.3d 1, 14, overruled on another ground in *In re Sassounian* (1995) 9 Cal.4th 535, 543-544, fn. 5.) We perceive no prejudice from the dismissal of the substantive robbery charge, nor do we find any procedural bar to Moloi's conviction of felony murder based on the theory he committed murder during the commission of a robbery.

#### *Imposition of Court Security Fee*

Section 1465.8, subdivision (a)(1) provides, "To ensure and maintain adequate funding for court security, a fee of twenty dollars (\$20) shall be imposed on every conviction for a criminal offense, including a traffic offense, except parking offenses as defined in subdivision (i) of Section 1463, involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code. Moloi contends the imposition of this fee to his case violates the prohibition against ex post application of law because this crime was committed before the statute's effective date. However, after Moloi filed his opening brief, the California Supreme court held that the security fee provision "serves a nonpunitive purpose" and "does not violate either federal or state prohibitions against ex post facto statutes. [Citations.]" (*People v. Alford* (2007) 42 Cal.4th 749, 759.) Therefore, his contention is meritless.

### *Section 1202.4 Restitution*

The court ordered Moloi to pay restitution to the California Victim of Crimes Compensation Fund in the amount of \$2,565.37 and \$596.40 restitution to the Orange County Victim/Witness Emergency Fund. The abstract of judgment reflects an order of \$3,161.77 (\$2,565.37 + \$596.40) in restitution pursuant to section 1204, subdivision (f). Moloi challenges the \$596.40 restitution order on the grounds that it was not authorized by statute.

The Attorney General points out that no objection to this order was made at the sentencing hearing, a fact which Moloi does not dispute. Moloi skirts the waiver issue by claiming no objection need be made when a sentence is “unauthorized.” We find no merit in his attempt to circumvent the waiver rule or on the merits of his contention.

As stated in *People v. Smith* (2001) 24 Cal.4th 849, “As a general rule, only ‘claims properly raised and preserved by the parties are reviewable on appeal.’ [Citation.] We adopted this waiver rule ‘to reduce the number of errors committed in the first instance’ [citation], and ‘the number of costly appeals brought on that basis’ [Citation.] In the sentencing context, we have applied the rule to claims of error asserted by both the People and the defendant. [Citation.] Thus, all ‘claims involving the trial court’s failure to properly make or articulate its discretionary sentencing choices’ raised for the first time on appeal are not subject to review. [Citation.]” (*Id.* at p. 852.)

Although there is an exception for “unauthorized sentences” (*People v. Welch* (1993) 5 Cal.4th 228, 235), Moloi fails to convince us that the court here exceeded its jurisdiction by ordering payment to the Orange County Victim/Witness Fund. First, although the exact basis for the \$596.40 order was not stated at sentencing, defense counsel failed to request clarification of the order. The court asked counsel, “Do you want to be heard on the proposed restitution orders?” Counsel responded, “No, your honor.” Section 1202.4, subdivision (f) mandates restitution for economic losses to



victims of crimes, even when the assistance comes from a governmental agency.<sup>4</sup> Moloi fails to convince us that the Orange County Victim/Witness Fund is outside the statutory scheme for restitution to crime victims such that the trial court's order here constitutes an unauthorized sentence. Consequently, Moloi has waived the issue on appeal.

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<sup>4</sup> The probation report indicates that Reynolds' mother received \$1,500 in aid for Reynolds' funeral services, but that there may be additional costs associated with the death.

III  
DISPOSITION

The judgment is affirmed.

SILLS, P. J.

WE CONCUR:

BEDSWORTH, J.

ARONSON, J.